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U.S. DISTRICT COURT
CLEVELAND

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

ALBERT J. WALTER,
Petitioner,

vs.

J. T. SHARTLE,
Respondent.

) **CASE NO. 1:08cv651**
)
) **JUDGE DAN AARON POLSTER**
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MEMORANDUM AND ORDER

On March 14, 2008, Petitioner Albert J. Walter filed a Petition Pursuant to 28 U.S.C. § 2241 (§ 2241 Motion”) (ECF No. 1), asking the Court to issue a writ of habeas corpus. Petitioner asserts that the U.S. Bureau of Prisons (BOP) has not properly credited toward his sentence time spent in pre-trial detention. Walter received an 18-month sentence on November 9, 2007 from Judge David H. Hurd in Case No. 5:05CR516 (D. New Hampshire). As petitioner is serving this sentence at FCI Elkon, Ohio, jurisdiction lies with this Court.

According to the petition, Walter was arrested on October 2, 2006 on an unrelated state charge. Bond was set at \$60,000. Petitioner claims that when he attempted to post bail, he was told that there was a federal detainer lodged pursuant to an arrest warrant issued by Judge Hurd. On November 7, 2006, Walter was taken into federal custody on a Writ of Ad Prosequendum. On November 9, 2007, he entered a guilty plea in federal court, and was simultaneously sentenced to 18 months, to be followed by three years of supervised release. On January 29,

2007, Walter was sentenced by a state judge to one year in prison, to run concurrent to the federal sentence.

In his petition, Walter alleges that BOP has not given him credit for the time he spent in custody prior to reaching the federal penitentiary in March, 2007. While it is not clear that Petitioner has fully exhausted his administrative remedies, the Court took it upon itself to contact BOP and requested a written report of the time the petitioner spent in federal custody and what jail credit had been granted. Upon the Court's request, the BOP recalculated the petitioner's time in federal custody prior to sentencing. The recalculation resulted in the petitioner being granted additional jail credit toward his federal sentence.¹ The date the petitioner is projected to be released from custody has been moved up from June 8, 2008 to May 1, 2008. As May 1, 2008 will be less than 18 months from November 7, 2006, it appears that Walter's release date has now been calculated correctly. While Walter contends he should be credited with the time he spent in state custody between October 2 and November 7, 2006, this claim is meritless. The existence of a detainer lodged against a state prisoner in custody for a state charge does not convert state jail time to federal time. Had Walter posted bail on the state charge he would have been taken into federal custody, but he elected not to do so. Walter has been given credit for this time toward his state sentence.²

As it is apparent that BOP has given Walter the relief to which he is entitled, the petition is hereby **DISMISSED AS MOOT**.

IT IS SO ORDERED.



Dan Aaron Polster
United States District Judge

¹See attachment #1

²Walter has also been given credit toward his state sentence for the period December 11, 2006 - February 13, 2007, when he was in state custody.